
No. 9881

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United States
Circuit Court of Appeals
For the Ninth Circuit

JOHN THOMAS COLE and OMEGA TRICE COLE,
Appellants,

vs.

HOME OWNERS' LOAN CORPORATION, a corporation,
Appellee.

UPON APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE EASTERN DISTRICT OF
WASHINGTON, NORTHERN DIVISION

APPELLANT'S REPLY BRIEF

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ARGUMENT

It is submitted that the inferences drawn by counsel for appellees from the cases cited by him are erroneous:

Statements in *Wright vs. Vinton Branch*, etc., 57 S. Ct. 556, 300 U. S. 440, 81 L. Ed. 736, relied upon him, were *obiter dicta*, and were overruled by the decision in *John Hancock Insurance Co. vs. Bartels*, 308 U. S. 180, 84 L. Ed. 176, 60 Sup. Ct. 221.

In *Wright vs. Union Central Life Insurance Company*, 311 U. S. 273, 61 S. Ct. 196, also cited by counsel for appellee, the court stated, in the first paragraph of the opinion: "The narrow issue presented by this

petition for *certiorari* and which moved us to grant it is whether under 75 (s) (3) the debtor must be accorded an opportunity, on his request, to redeem the property at the reappraised value or at a value fixed by the court before the court may order a public sale." If that, then, is the narrow issue, how can the case be cited as proving anything else? In that particular case, the proceedings were terminated prior to the expiration of three years because the petitioner had repeatedly failed and refused to comply with the orders of court and the terms under which he held possession. See *In Re Wright*, 108 Federal (2nd) 361, from which the appeal was taken. In the present case, appellants have never failed to comply with the law or orders of court.

The provisions of Section 75 (s) (3) of the Bankruptcy act do not provide acceleration of the three year period any time the court believes, from the evidence before it, that the farmer-debtor cannot rehabilitate himself in three years. The clear meaning of the statute, and the interpretation of the Supreme Court of the United States, is that the only way to determine whether or not any given farmer, who complies with

the law and proper orders of court, can rehabilitate himself in three years of possession under a stay order is to give him a full three years of possession thereunder.

Respectfully,

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